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10 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

11 BANK OF AMERICA, N.A.,

12 Plaintiff,

13 vs.

14 HARTRIDGE HOMEOWNERS
ASSOCIATION; SATICOY BAY, LLC SERIES
15 5528 MERIDIAN RAIN; ABSOLUTE
COLLECTION SERVICES, LLC,

16 Defendants.

17 SATICOY BAY, LLC SERIES 5528
18 MERIDIAN RAIN,

19 Counterclaimant,

20 vs.

21 BANK OF AMERICA, N.A.,

22 Counterdefendant.
23

Case No.: 2:16-cv-00409-KJD-PAL

**STIPULATION AND ORDER TO STAY
LITIGATION PENDING FINAL
RESOLUTION OF PETITION(S) FOR
WRIT OF CERTIORARI TO UNITED
STATES SUPREME COURT**

24 Bank of America, N.A., (**BANA**), Hartridge Homeowners Association (**Hartridge**),
25 Absolute Collection Services, LLC (**ACS**), and Saticoy Bay Series 5528 Meridian Rain a/k/a Saticoy
26 Bay, LLC (**Saticoy**) (collectively, the **parties**) stipulate as follows:
27

- 28 1. This lawsuit involves quiet title/declaratory relief and other claims related to a non-

1 judicial homeowner's association foreclosure sale conducted pursuant to NRS 116.

2 2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in *Bourne Valley*
3 *Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159–60 (9th Cir. 2016), holding that NRS 116
4 is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,
5 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

6 3. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*
7 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*,
8 133 Nev. Adv. Op. 5, __ P.3d __, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct contrast
9 to *Bourne Valley*, that no state action supported a challenge under the Due Process Clause of the
10 United States Constitution.

11 4. The parties in *Bourne Valley* and *Saticoy Bay* are seeking review of both decisions in
12 the United States Supreme Court. Bourne Valley's deadline to file its petition for writ of certiorari of
13 the Ninth Circuit's *Bourne Valley* decision is April 3, 2017. *See Bourne Valley Court Tr. v. Wells*
14 *Fargo Bank, NA.*, United States Supreme Court Case No. 16A753. Wells Fargo's deadline to file its
15 petition for writ of certiorari of the Nevada Supreme Court's *Saticoy Bay* decision is April 25, 2017.
16 Thus, the parties believe the stay requested herein is appropriate.

17 5. On February 8, 2017, the Nevada Supreme Court stayed the issuance of the remittitur
18 in *Saticoy Bay* pending the filing of a petition for a writ of certiorari with the United States Supreme
19 Court, and if a petition is filed, the stay of the remittitur will remain in effect until final disposition
20 of the certiorari proceedings before the United States Supreme Court.

21 6. Several judges in this district have stayed similar cases pending exhaustion of all
22 appeals before the United States Supreme Court. *See e.g., Nationstar Mortg. LLC v. Green Valley S.*
23 *Owners Ass'n*, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); *Bank of*
24 *America, N.A. v. Canyon Willow Trop Owners' Ass'n*, No. 2:16-cv-01327-GMN-VCF, ECF No. 25
25 (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA*, No. 2:16-cv-00763-
26 JAD-CWH, ECF No. 29 (D. Nev. Feb. 28, 2017).

27 7. To determine if a continued stay is appropriate, the Court considers (1) damage from
28 the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the orderly

1 course of justice. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066
 2 (9th Cir. 2007) (setting forth factors). Here, the factors support a stay of litigation.

3 a. Damage from Stay: Any damage from a temporary stay in this case will be minimal
 4 if balanced against the potential fees, costs, and time which would surely ensue in this matter if
 5 litigation were allowed to continue that could be mooted by a decision in *Bourne Valley* certiorari
 6 proceedings. Indeed, the parties will be able to avoid the cost and expense of continued legal
 7 proceedings in light of what is unsettled law to say the least. Moreover, the Court will be relieved of
 8 expending further time and effort until the conflict between the circuit and Nevada Supreme Court is
 9 resolved. Thus, a stay will benefit all parties involved herein.

10 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls
 11 one party more than the other. This relatively equal balance of equities results from the need for all
 12 parties to have finality, given the split in the state and federal court decisions. The parties agree that
 13 any hardship or inequity falling on any of them is outweighed by the benefits of a stay.

14 c. Orderly Course of Justice: At the center of this case is a homeowners' association's
 15 foreclosure sale under NRS 116. The outcome of the petitions for writ in *Bourne Valley* and/or
 16 *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will
 17 expend resources that will be unnecessary if either or both petitions are granted. A stay would also
 18 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would
 19 substantially promote the orderly course of justice in this case. A stay will avoid the moving
 20 forward without final resolution of the federal issues and the state court/federal court conflict.

21 8. The parties agree that all proceedings in the instant case, including responses to any
 22 pending summary judgment motions and other litigation deadlines, are stayed pending final
 23 resolution of the *Bourne Valley* and/or *Saticoy Bay* certiorari proceedings before the United States
 24 Supreme Court.

25 9. Any party may file a written motion to lift stay at any time if such party determines it
 26 appropriate. Once the stay is lifted, the parties agree they will submit a new proposed scheduling
 27 order addressing any currently unexpired deadlines including any deadlines to respond to pending
 28 summary judgment motions.

DATED this 7th day of March, 2017.

<p>AKERMAN LLP</p> <p><u>/s/ Tenesa S. Scaturro, Esq.</u> ARIEL E. STERN, ESQ. Nevada Bar No. 8276 TENESA S. SCATURRO, ESQ. Nevada Bar No. 12488 1160 Town Center Drive, Suite 330 Las Vegas, Nevada 89144 Attorneys for Plaintiff Bank of America, N.A.</p>	<p>LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.</p> <p><u>/s/ Michael F. Bohn, Esq.</u> Michael F. Bohn, Esq. 376 E. Warm Springs Road, Suite 140 Las Vegas, NV 89119 Attorneys for Defendant Saticoy Bay LLC Series 5528 Meridian Rain</p>
<p>LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.</p> <p><u>/s/ David Markman, Esq.</u> J. William Ebert, Esq. David Markman, Esq. 9900 Covington Cross Drive, Suite 120 Las Vegas, NV 89144 Attorneys for Hartridge Homeowners Association</p>	<p>ABSOLUTE COLLECTION SERVICES, LLC</p> <p><u>/s/ Shane D. Cox, Esq.</u> Shane D. Cox, Esq. 8440 W Lake Mead Blvd., Suite 210 Las Vegas, NV 89128 Attorneys for Absolute Collection Services, LLC</p>

ORDER

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

DATED: March 24, 2017

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